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May 11, 2021

VIA EMAIL

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Re: Notice pursuant to Settlement in *ADP v. Fann*, No. CV2021-006646

Dear Kory, Thomas, Dennis, Jack, and Jordan:

As you may be aware, on May 5, 2021, Secretary of State Katie Hobbs sent a letter (the “Letter”) to Senate Audit Liaison Ken Bennett detailing her concerns about the procedures and practices of the Senate’s review of the November 2020 General Election in Maricopa County. On May 7, 2021, Mr. Bennett sent a response to the Secretary’s letter. While Mr. Bennett was dismissive of the very many departures from standard election audit best practices that the Secretary highlighted—which, again, does not instill confidence in the integrity and reliability of this “audit,”—I write today to reiterate serious and ongoing concerns regarding the adequacy of procedures for ballot security and to raise additional ballot security issues that have since arisen. And so there is no doubt, this letter is intended to provide notice under the parties’ Settlement in *ADP v. Fann* and demands immediate corrective action.

Failure to have and disclose policies for storage of ballots after May 14. The Secretary is deeply concerned about Defendants’ plan to move the ballots and other election equipment from their current location in the Coliseum after May 14, without returning them to Maricopa County. The Defendants do not seem to have and, if they do, they have not disclosed any policies or procedures related to the secure moving or secure storage of ballots at some other, unknown

location. If Defendants are going to retain the ballots and election equipment after May 14, they must move and retain them in a secure and documented manner, including using tamper-evident and numbered seals which Defendants do not appear to be using currently. Pursuant to sections 1(a) and 1(d) of the Settlement, please immediately provide any and all policies specifying how Defendants plan to do so. Please also notify us when and where the ballots and election equipment will be packed and moved so that the Secretary's observers may observe pursuant to section 1(h) of the Settlement.

Failure to have and abide by adequate security procedures for ballots. In Section 1(d)(ii) of the Settlement, Defendants warranted that they will "have and abide by policies to ensure that ballots are secured in a manner that prevents unauthorized access, including maintain a detailed log of who accesses the ballots." The Secretary has identified the following breaches of this agreement:

- The Counting Floor Procedures produced by Cyber Ninjas, such as Wake TSI "Floor Counting Policies" § 13(1)(C), suggest that both ballot batches and individual ballots will be separated from their ballot boxes. Cyber Ninjas' procedures (e.g., Ex. D3) provide for Ballot Box Chain of Custody to be maintained but provide no information for logging access to ballot batches or individual ballots when they are separated from their box for some reason. (Letter at 3.)
- The Secretary's letter noted that ballots had been left unattended on tables during the counting process. (Letter at 5.) Mr. Bennett's letter did not address this issue. Please tell us what the Senate and its auditors will be doing to address this issue.
- The chain link fence surrounding ballot boxes is only 8 feet tall, and lacks a ceiling, meaning that an unauthorized person could climb over the wall and access the ballots. This concern is heightened by the fact that the Crazy Times Carnival was also operating in the Coliseum, and that some Defendants have suggested that ballots will remain stored there during high school graduation ceremonies. (Letter at 4.) While Mr. Bennett's letter was dismissive of this issue, the Secretary's concerns remain, particularly given the undisclosed plans for moving, storing, and securing the ballots after May 14, discussed above.
- The Counting Floor Policies document, at pages 3, 10, and 15, reference the use of numbered seals for ballot boxes, but the Secretary's observers have noted that they have not seen the use of numbered seals on ballot boxes, and, when one of the Secretary's observers asked Bryan Blehm last night whether ballot boxes would be resealed with tamper-evident or numbered seals, he indicated that they would not be.

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Pursuant to the Settlement, we await your response in the next 48 hours.

Sincerely,

A handwritten signature in dark ink, consisting of several fluid, overlapping strokes that form a cursive representation of the name Josh Bendor.

Josh Bendor

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